IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7693 of 2022

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Vikash Kumar Chaturvedi S/o Vidyarthi Chaturvedi r/o Village Bagahi P.S. Amanaur, District Saran.

... ... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary Excise Department, New Secretariat Patna.
2. The Collector Muzaffarpur.
3. The Deputy Collector Muzaffarpur.
4. The Superintendent of Police Muzaffarpur.
5. The Superintendent of Excise, Muzaffarpur.
6. The SIO of sareya Police Station, District Muzaffarpur.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Chandra Kant, Advocate
For the State	:	Mr. Kumar Manish, SC-5

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE MADHURESH PRASAD)

Date : 20-04-2023

Heard learned counsel for the petitioner and learned counsel for the State.

2. The petitioner's vehicle (Maruti Suzuki) was searched and on alleged recovery of 2 litres illicit country liquor, in bottles of packaged drinking water, being carried by passengers in the vehicle, has been seized and First Information Report (for brevity 'FIR') bearing Sareya P.S. Case No. 604/2020 has been instituted on 08.09.2020, under Section 30(a) of Bihar Prohibition and Excise Act, 2016.

3. It is the petitioner's case that his vehicle had been hired by someone for travelling from *Khagaria* to the State of Haryana. He was not aware of any liquor being carried by the passengers. From the F.I.R., it is evident that petitioner was driver as well as owner of the vehicle and even if the passengers had kept some illicit country liquor in bottles of packaged drinking water, criminal liability for the same cannot be vicariously fastened on the petitioner. It is his assertion that in the instant case, it is evident from the records being the orders passed by the Confiscating Authority, Appellate Authority as well as the Revisional Authority that there is no report of the Forensic Science Laboratory (hereinafter referred to as 'the FSL') certifying alleged recovery of the liquid from the packaged drinking water being an intoxicant. It is, in this circumstance, that this Court, earlier on 22.07.2022, had directed production of original record of the confiscation proceedings.

4. Learned counsel for the State is present with the original file/records of the confiscation proceedings. He submits that it is apparent from bare perusal of the order passed by the Commissioner Excise on 24.12.2021, in Excise Appeal Case No. 864 of 2021, that there was a report, dated 17.09.2020, of the Sub-Inspector of Excise, confirming recovery of illicit liquor.

5. On going through the order of the Confiscating Authority/Appellate Authority and the Revisional Authority regarding concurrent finding of the vehicle being liable to confiscation, this Court would record that none of the Authorities have based their decision with reference to any report of the FSL, certifying the liquid seized in the packaged drinking water bottle from the vehicle, as being intoxicant/illicit liquor.

6. Learned counsel for the State is also not able to find from the original records, which are present in Court today, to show that the liquid recovered in packaged drinking water bottle was intoxicant/illicit liquor.

7. Section 56 of the Act, as it stood on the date of seizure, passing of the order by the Confiscating Authority up to passing of the order by the Revision Authority read as follows:-

> “[2]*[56. Things liable for confiscation.- Whenever an offence has been committed, which is punishable under this Act.-*
>
> *(a) any intoxicant or liquor unlawfully imported, transported, manufactured, sold, stored, possessed, material, utensil, implement, apparatus, package or covering and or the other contents, if any, of such receptacle, package or covering for the*

purposes of storing, manufacturing or labelling such intoxicant or liquor;

(b) any animal, vehicle, vessel or other conveyance used for carrying any intoxicant or liquor; or

(c) any premises or part thereof that may have been used for storing or manufacturing any liquor or intoxicant or for committing any other offence under this Act;

shall be liable to be confiscated in a manner prescribed under the provisions of the Act,

(d) The State Government, if deem necessary, may issue necessary directions, guidelines, Regulations and instructions with respect to mode and manner of search, seizure and confiscation.]"

8. From plain reading of the provision, it is clear that the vehicle would be liable for confiscation, if it is used for carrying any "intoxicant or liquor". It is, therefore, obvious from the bare reading of the Rule that the Confiscating Authority would have to arrive at a conclusion regarding vehicle liable for confiscation. Only, thereafter, the authority could assume jurisdiction to proceed for confiscation according to the procedural prescription contained in the Act. If the vehicle was not used for carrying any intoxicant or liquor, there can be no basis for the confiscating Authority to arrive at a conclusion that the vehicle is liable for confiscation. In such circumstances, he would have no jurisdiction under the Act, to proceed for confiscation of the vehicle.

9. It is obvious from the original records produced in Court, the order of Confiscation dated 04.02.2021, order of the Appellate Authority dated 24.10.2021, and order dated 25.02.2022, passed by the Revisional Authority that there is no report of any FSL, certifying the liquid recovered from the two bottles of packaged drinking water, allegedly from the petitioner's vehicle, as being a liquor or intoxicant. There was, thus, no factual basis whatsoever for the Collector/Confiscating Authority to conclude that the vehicle was liable for confiscation.The confiscation proceedings and the confiscation order, therefore, is wholly without jurisdiction.

10. The Confiscation order has no sanction of law and, thus, offends the petitioner's Constitutional right under Article 300A of the Constitution of India. The order of confiscation dated 04.02.2021, passed by the Collector, Muzaffarpur, is, therefore, quashed.

11. Having regard to the above noted reasons for quashing of the confiscation order, the order passed by the Excise Commissioner in Excise Appeal Case No. 864 of 2021 on 24.12.202, as well as the order dated 25.02.2022, passed by the Additional Chief Secretary, Bihar, Patna in Excise Revision No.

36 of 2022, being orders of affirmation of the Confiscating Authorities dated 04.02.2021, must also collapse and are hereby quashed.

12. The petitioner would be entitled to consequential release of the vehicle in his favour without being visited with any financial consequences . The release, however, would be subject only to the verification of petitioner’s identity, viz-a-viz, ownership of the vehicle in-question, which the Collector, Muzaffarpur, would be under a legal obligation to conclude and release the vehicle subject to such verification within a period of two (2) weeks’ from the date of receipt/production of a copy of this order.

13. Accordingly, the writ application stands allowed.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

Raj kishore/-

AFR/~~NAFR~~	**AFR**
CAV DATE	
Uploading Date	25.04.2023.
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